1951

File No O. K. Lands /51

Legal Deptt

A BRANCH

Subject:- Opinions under the P9F Bombay Khar Lands Act 1948

File No. O. K. Lands /51

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C O N T E N T S

Legal Department File No C. Khar Lands /51

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L.D.R.I. No. 4 dt 2-1-51

Submitted

By G.R.R.D. No. 5558/49 dated 7-7--50 the scheme for development of Khar lands at Borli Panchatan, Mahal Shriwardhan, Kolaba district has been sanctioned under sec. 15 of the Bombay Khar Lands Act, 1948. Secretary of the Dist. K.L.Board states that the Ughadi which was proposed to be repaired under the scheme is in a dilapidated condition and it would be useless to repair it. But since the scheme is already sanctioned by Government under sec. 15 of the Act and published, it would not be possible to modify or supplement the scheme. R.D. suggests that the dropping of the item regarding repair to "Ughadi" amounts to varying the scheme and according to R.L.A. 's opinion No. 13336 dated 20-9-1950 this is not legally feasible; but after the proposed legislation empowering the Board to vary the scheme is passed a notification may be issued modifying the original scheme. The R.L.A. is requested to advise in the matter.

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Legal Department

Seen and returned

The view taken by the Revenue Department is correct.

Sd/--J.R.Dhurandhar,

o.c. 5/2

Additional Secretary to Government.

U.R. to R.D., No. 2267, dated the 6th Feb 1951.

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Legal Department

om ay Khar Lands
ct, 1948, sec. 25.

ombay Tenancy &
gricultural
ands Act, 1948-
ec. 2 (18).

Section 25(2) of the Bombay Khar Lands Act, 1948 provides that "The State Government may contribute 40% of the cost and the landlords and tenants shall respectively contribute 40% and 20% of such cost". It is reported that in Kanara District there are in between the cultivating tenants and occupants Mulgenidars and Potmulgenidars, whose status is that of permanent tenants. The question raised for the R.L.A.'s consideration is : Whether for the purposes of section 25 of the Bombay Khar Lands Act, 1948, the definition of the terms "landlord" and "tenant" in the Bombay Tenancy Act can be adopted.

The Bombay Khar Lands Act does not define the terms "landlord", and "tenant". The rule as to the exposition of one Act by the language of another is satisfactorily and most comprehensively laid down in the broad statement of Lord Mansfield as follows:-

"Where there are different statute in pari-materia though made at different times or even expired and not referring to each other they shall be taken and construed together as one system and as explanatory of each other." (See Maxwell 8th Edition page 31.)

The Bombay Land Revenue Code, the Bombay Tenancy Act, and the Bombay Khar Lands Act are the Acts practically in pari-materia and consequently, the difinitions contained in the Bombay Tenancy Act of the terms "Landlord" and "tenant" can be usefully considered for the pruposes of determining the shares of contributions under section 25 of the Bombay Khar Lands Act,,However, recently the Civil Judge, Senior Division, Karwar, has held that the Bombay Tenancy Act does not apply to Mulgeni tenants. This question was considered by the R.L.A. in his opinion dated the 5th May, 1949 and it was held

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Bombay Tenancy Act does apply even to Mulgeni tenants who are more or less permanent tenants. In Narayan Vs. Shri Ramchandra, 27. Bom.373, it was observed that a Mulgeni lease is a purachase protanto of the interest assured. In view of this observation and of the decision of the Civil Judge, Senior Division, Karwar, the Legal position seems still unsettled. Moreover, the occupant of these lands is entitled to a fixed rent whereas the Mulgenidars and Pot-mulgenidars appear to derive benefit of the increased profit of the land. Consequently, it may appear rather a great hardship to demand the full contribution as provided in section 25 of the Bombay Khar Lands Act from the Occupant treating him as a landlord and the Mulgenidar and pot-mulgenidar and the actual tenant who would together be liable to pay their contribution under that provision. In the circumstances it appears desirable to amend the Act defining these terms.

Cd/- P.M.Lad

O.C.

Additional Secretary to Government

U.R. to R.D. No. 4609, dated the 22nd March, 1951.

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Office of the R.L.A.

Clause (a) of sub-section (1) of section 17-A of the Bombay Khar Lands Act, 1948, provides that if after the scheme comes into force, the Board considers that the scheme is defective on account of an error, irregularity or informality, the Board may apply to the State Gocernment for the variation of the scheme. Clause (b) provides that if the State Government is satisfied that the variation proposed by the Board is on account of an error, irregularity or informality, which does not vary the scheme in any material particulars, the State Government may, by a notification in the Official Gazette, sanction the variation. If the scheme is varied in any material particulars, then under sub-section (2) the State Government shall require the Board to follow the provisions of sections 13,14 and 15 as if such variation was itself a scheme. A detailed estimate of the cost of the schme is one of the material particulars required to be incorporated in a scheme under section 12(2)(vi) of the Act. The original cost of the scheme was Rs. 7954/- while under the variation it is proposed to enhance it by Rs. 2731/-. This would appear to be a material variation and the provisions of sub-section (2) of section 17-A would appear to be attracted The view expressed by the R.D. that the provisions of sections 13,14 and 15 will have to be followed is correct.

o.c. Sd/- J.R.Dhurandhar 6/6

Remembrancer of Legal Affairs.

U.R. to R.D. No. 8949, dated the 7th June 1951.

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Office of the R.L.A.

Bombay Khar Lands Act, 1948. (Bom. LXXII of 1948).

Section 16.

As observed by R.D. the proposal of the Board amounts to superseding the two schemes and to making a fresh scheme for larger area incorporating the area under the two sanctioned schemes. The Bombay Khar Lands Act, 1948, contains no provisions for revoking a scheme after it is sanctioned. Consequently the proposal of the Board would not be legally feasible. The present schemes will have to be executed after variation, if necessary.

Sd/- J.R.Dhurandhar

O.C. 23/6

Remembrancer of Legal Affairs.

U.R. to R.D. No. 10099. dated the 25th June 1951

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LEGAL DEPARTMENT

The question for the M.L.A's consideration is whether the Khar Lands Development Board is competent to suspend or remit dues recoverable from the Khatedars or tenants under section 25 and section 31 of the Bombay Khar Lands Act, 1948.

Section 25, sub-section (1) of the Bombay Khar Lands Act, 1948, provides that the cost of the Scheme shall be met by a contribution by the Government and the landlords and tenants in the proportion specified in sub-section (2). Under sub-section (2), the Provincial Government has to contribute 40 per cent of the cost and the landlords and tenants 40 per cent and 20 per cent of the cost respectively. Section 26 provides that the landlords and tenants of the land who are not able to pay their share of contribution towards the cost of the scheme under section 25 may within the prescribed period make an application to Government for the grant of a loan for the purpose of paying their share of such contribution. Under the proviso to rule 9 sub-rule (2) of the Khar Lands Rules, the contribution of 20 percent leviable under the second proviso of sub-section (2) of section 25 may be levied from the owners in the form of labour. Reading these provisions together it is clear that if the tenants and the landlords are unable to pay their contribution either in cash or in the form of labour, they may take a loan from Government for the purpose. Inability of the landlords and the tenants to pay their contributions under section 25 on the plea of failure of crops would be no valid ground either for remission or for suspension of such contributions. Nor is there any provision either in the Act or in the rules to permit such remission or suspension of the contribution. Remission of the whole or part of the contribution would also amount to disturbing the proportion in which the cost of

the scheme is required by section 25 to be met and would as such be clearly not contemplated by the Act.

Section 31, sub-section (1) provides that all landlords and tenants and owners of lands benefitted or protected by embrankments included in a scheme under this Act shall pay to the Board an annual contribution which shall be leviable in such manner and at such rate and subject to such conditions if any, as may be prescribed . Rule 18 provides for the levy of annual contribution and the manner of levying it. There is no provision either int the Act or in the Rules for remission or for suspension of the levy of this annual contri butions either. No remission or suspension, therefore, can be given.

It seems however expedient and advisable that rules should provide for supension of the contribution (i.e. postponement of recovery) in order to give relief in cases of hardship.

Sd/- P.M.Lad

Additional Secretary to Government.

U.R. to R.D. No. 11435, dated the 19th July 1951.

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4 Cs,